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Supreme Hauling Enterprises, Inc. d/b/a Supreme Trucking Co.; and its alter egos and successors, D.T.J. Trucking, Inc. and D.L.M. Trucking Corp. and their alter egos and successors D.L.M. Truck Rentals, Inc. and Infinity Trucking, Inc. and Lynn Maschietto, an individual and Milverton Watson and Local 282, International Brotherhood of Teamsters, AFL-CIO, Party to the Contract. Case 29-CA-18950

December 20, 2001

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

On April 29, 1996, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, directing Supreme Hauling Enterprises, Inc. d/b/a Supreme Trucking Co., (Respondent Supreme) its officers, agents, successors, and assigns, to make whole its employee, Milverton Watson, for its failure to pay him the contract wage rate owed under the terms of the collective-bargaining agreement between the Respondent and Local 282, International Brotherhood of Teamsters, between about September 17, 1994, and January 27, 1995, the date of his discharge, and offer Watson immediate and full reinstatement and make him whole for any loss of earnings and other benefits resulting from his unlawful discharge in violation of the National Labor Relations Act. On October 22, 1996, the United States Court of Appeals for the Second Circuit entered its judgment, enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatee under the Board's Order, on April 30, 1999, the Regional Director for Region 29 issued a compliance specification and notice of hearing alleging the amount due, and further alleging that D.T.J. Trucking, Inc. (D.T.J.) and D.L.M. Trucking Corp. (D.L.M.) were alter egos and successors to Respondent Supreme and therefore that D.T.J. and D.L.M. were jointly and severally liable with Respondent Supreme to satisfy the court's October 22, 1996 judgment.

On July 27, 1999, the Board issued a Supplemental Decision and Order³ that fixed the amounts owed by Respondent Supreme, and found that D.T.J. and D.L.M.

were alter egos and successors to Respondent Supreme and therefore that D.T.J. and D.L.M. were jointly and severally liable with Respondent Supreme to satisfy the court's October 22, 1996 judgment. On November 8, 1999, the U.S. Court of Appeals for the Second Circuit entered a Supplemental Judgment enforcing in substantial part the Supplemental Order of the Board.⁴

Further controversy having arisen as to whether certain additional corporate entities, namely, D.L.M. Truck Rentals, Inc. (D.L.M. Rentals) and Infinity Trucking, Inc. (Infinity), and whether Lynn Maschietto, an individual, should also be jointly and severally required to comply with the court's Supplemental Judgment, the Regional Director for Region 29 issued a supplemental compliance specification and notice of hearing alleging the backpay and other moneys due under the Board's Orders. Although properly served with a copy of the supplemental compliance specification,⁵ each of the Respondents failed to file an answer.

By letters dated September 13, 2001, counsel for the General Counsel advised the Respondents that no answer to the supplemental compliance specification had been received and that unless appropriate answers were filed by September 20, 2001, summary judgment would be sought. Each of the Respondents again failed to file an answer.

On September 27, 2001, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On October 2, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Respondent Lynn Maschietto filed a response, *pro se*, asserting that she should not be held personally liable for the amount due under the supplemental compliance specification. The other Respondents filed no response.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer

⁴ No. 99-4156. The court stated that the "application for summary entry of judgment enforcing an order of the National Labor Relations Board . . . is granted except insofar as it seeks payment of medical expense reimbursement in a presently undetermined amount." Thereafter, the Regional Director determined that Watson had no such expenses through the date that the Supplemental Judgment issued.

⁵ Although a copy of the supplemental compliance specification was served by certified mail on each of the Respondents, each refused to accept service. Failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Respondent D.L.M. Trucking was individually served at a later date with the supplemental specification by certified mail, and accepted service. Further, a copy of the supplemental compliance specification was served by regular mail on each of the Respondents, and none of these copies were returned.

¹ 321 NLRB No. 5 (not published in Board volumes).

² No. 96-4138.

³ 328 NLRB No. 152 (not published in Board volumes).

within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the supplemental compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the supplemental compliance specification to be admitted as true as against Respondents Supreme, D.T.J., D.L.M., D.L.M. Rentals, and Infinity, and grant the General Counsel's Motion for Summary Judgment against them.

The response to the Notice to Show Cause filed by Respondent Lynn Maschietto states that she does not believe that she should be held personally responsible for the claim of Milverton Watson, because although she has operated "the business" since her husband's incarceration and subsequent death, she has never known or heard of Watson. Maschietto further states: "If I ever signed any papers indicating I owned or was part of any corporation it was done because my husband told me to." Maschietto does not, however, offer any explanation for her failure to file an answer to the supplemental compliance specification by the extended due date of September 20, 2001. Although she filed her response to the Notice to Show Cause pro se, and thus is apparently unrepresented by counsel, this is not by itself good cause for failing to file a timely answer.⁶

In the absence of good cause for Respondent Maschietto's failure to file a timely answer, we shall grant the General Counsel's motion with respect to Respondent Maschietto and deem all of the allegations to be admitted as true as against her. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the supplemental compliance specification and we will order payment by the Respondents of those amounts to the discriminatee, plus interest accrued on the amounts to the date of payment.

⁶ See *Lockhart Concrete*, 336 NLRB No. 88 (2001).

FINDINGS OF FACT

At all times material herein, Lynn Maschietto or Dennis Maschietto, her deceased husband, have been the officers and shareholders of Respondents Supreme, D.T.J., and D.L.M., and have had full knowledge of their affairs.

At all material times, D.L.M. Rentals, a domestic corporation, had its principal place of business located at 9 and 11 Newark Avenue, Staten Island, New York, and a yard at which it parked its vehicles located at 101 Houseman Avenue, Staten Island, New York. At all material times, D.L.M. Rentals has existed for the purpose of providing trucking services for the transportation of building and related materials.

At all material times, Infinity, a domestic corporation, has had its principal place of business located at 101 Houseman Avenue, Staten Island, New York. At all material times, Infinity has existed for the purpose of providing trucking services for the transportation of building and related materials.

At all times material herein, Lynn Maschietto has been an officer and/or shareholder of D.L.M., D.L.M. Rentals, and Infinity, and has been personally responsible for the corporate policies and the operations of D.L.M., D.L.M. Rentals, and Infinity.

Respondents Supreme, D.T.J., and D.L.M. established D.L.M. Rentals and Infinity for the purpose of escaping various legal actions and judgments against them. On about October 1, 1999, Respondents Supreme, D.T.J., D.L.M., and D.L.M. Rentals began the process of merging their operations. On about October 1, 1999, Respondents Supreme, D.T.J., and D.L.M. transferred their operations, including their machinery and equipment at 101 Houseman Avenue, Staten Island, New York, to D.L.M. Rentals. Also about October 1, 1999, D.L.M. began doing business as D.L.M. Rentals.

From around October 1999 until February 15, 2001, D.L.M. Rentals continued to operate the business of D.L.M. with individuals who were previously employed by D.L.M., at 101 Houseman Avenue, Staten Island, New York.

On about February 15, 2001, D.L.M. Rentals and Infinity began the process of merging their operations. About February 15, 2001, D.L.M. Rentals transferred its operations, including its machinery and equipment at 101 Houseman Avenue, Staten Island, New York, to Infinity. Since about February 15, 2001, Infinity has operated the business of Respondents Supreme, D.T.J., D.L.M., and D.L.M. Rentals, and has employed as a majority of its employees individuals who were previously employed by D.L.M. Rentals. About February 15, 2001, D.L.M. Rentals began doing business as Infinity.

At times material herein, Respondents Supreme, D.T.J., D.L.M., D.L.M. Rentals, and Infinity have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise. Based on their operations, Respondents Supreme, D.T.J., D.L.M., D.L.M. Rentals, and Infinity have been a single employer within the meaning of the Act and D.L.M. Rentals and Infinity have been alter egos of Respondents Supreme, D.T.J., and D.L.M.

By virtue of the fact that Respondents Supreme, D.T.J., D.L.M., D.L.M. Rentals, and Infinity are a single integrated enterprise and a single employer, and that they share common officers and shareholders, D.L.M. Rentals and Infinity were put on notice of the actual liability in Board Case 29-CA-18950, and the Supplemental Board Order and Supplemental Judgment of the Court of Appeals.

Based on the conduct and operations set forth above, Respondents D.L.M. Rentals and Infinity have continued the employing entity with actual notice of the liability of Respondents Supreme, D.T.J., and D.L.M., and are legally obligated, as alter egos of Respondents Supreme, D.T.J., and D.L.M. and/or as successors of Respondents Supreme, D.T.J., and D.L.M. to remedy the unfair labor practices of Respondents Supreme, D.T.J., and D.L.M. and, therefore, are jointly and severally liable to comply with the Supplemental Board Order and Supplemental Judgment of the Court of Appeals.

Respondents Supreme, D.T.J., D.L.M., D.L.M. Rentals, and Infinity have been undercapitalized, have disregarded corporate form, have transferred corporate assets without fair consideration, have failed to maintain an arm's-length relationship between and among these corporations and have used corporate assets to pay personal expenses of Lynn Maschietto.

Based on the facts set forth above, Lynn Maschietto is an employer under the Act, and is an alter ego of Respondents Supreme, D.T.J., D.L.M., D.L.M. Rentals, and Infinity, and, therefore, is also jointly and severally liable to comply with the Supplemental Board Order and Supplemental Judgment of the Court of Appeals.

ORDER

The National Labor Relations Board orders that the Respondent, Supreme Hauling Enterprises, Inc. d/b/a Supreme Trucking Co., and its alter egos and successors, D.T.J. Trucking, Inc. and D.L.M. Trucking Corp., and their alter egos and successors, D.L.M. Truck Rentals, Inc. and Infinity Trucking, Inc., their officers, agents, successors, and assigns, and Lynn Maschietto, an individual, shall, jointly and severally, make whole the individual named below, by paying him the amount following his name, plus additional net backpay which may accrue in the absence of a valid offer of reinstatement, plus interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal, State, and local laws and by making contributions on his behalf to the Local 282 Pension Fund and the Local 282 Annuity Fund in the amounts set forth below, plus any additional amounts accruing on the amounts to the date of payment, as computed in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979):⁷

Milverton Watson	\$150,921.55
Pension Fund Contribution	47,915.35
Annuity Fund Contribution	67,765.52
TOTAL:	\$266,602.42

Dated, Washington, D.C. December 20, 2001

Peter J. Hurtgen,	Chairman
Wilma B. Liebman,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁷ As set forth in the supplemental compliance specification, the outstanding Board Order and court judgment against Respondents Supreme, D.T.J., and D.L.M. for \$228,361.42, exclusive of interest, is included in this \$266,602.42 total. Therefore, this Order is an additional award of \$38,241, exclusive of interest, against Respondents Supreme, D.T.J., and D.L.M., and an award of \$266,602.42, exclusive of interest, against Respondents D.L.M. Rentals, Infinity, and Lynn Maschietto.